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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Ex Parte Presentation
CC Docket No. 92-237

Dear Mr. Caton:

Lockheed Martin IMS ("Lockheed"), through its counsel, responds to the ex parte presentation submitted by Mitretek Systems ("Mitretek") on September 4, 1997.¹ In its presentation, Mitretek claims that Lockheed's business relationships with Lockheed Martin Telecommunications (operator of Astrolink), Loral Space & Communications Ltd. (affiliate investor in Globalstar and operator of Loral SKYNET) and Lockheed Martin Intersputnik deprive Lockheed of the ability to satisfy the neutrality requirements imposed upon the new North American Numbering Plan Administrator ("NANPA").

Mitretek's claims are without merit. As Lockheed previously has certified to the Commission, Lockheed is in compliance with the North American Numbering Council's ("NANC") proposed neutrality criteria and will continue to comply with those requirements during its five year NANPA term.² The relationships described in Mitretek's presentation in no way violate or undermine that commitment.

¹ Letter from H. Gilbert Miller to William F. Caton dated September 4, 1997.

² Compliance with the neutrality requirements will be supervised within Lockheed Martin Corporation ("Lockheed Martin") by an organizational conflict of interest ("OCI") function, which is administered by a senior member of its organization. The mission of the long-standing OCI function is to monitor the business relationships within the Lockheed Martin corporate family and identify potential areas of conflict among those business relationships.

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1. The Competitive Neutrality Requirement

Mitretek's claims must be assessed in light of the purpose of the competitive neutrality requirement, as well as the particular formulation of that requirement proposed by the NANC. Evaluated from either perspective, Mitretek's claims lack merit.

The Commission explained the need for a competitively neutral NANPA in its 1995 *NANP Administration Order*.³ As the Commission pointed out, Bellcore's position as NANPA had become untenable because Bellcore's owners -- the Regional Bell operating companies -- were competing for numbering resources with PCS providers and other, emerging industry segments.⁴ A number of non-local exchange carrier users of telephone numbers had complained that Bellcore, as NANPA, favored the numbering needs of local exchange carriers ("LECs") and managed numbering resources to the detriment of wireless providers and other non-LEC users of numbers.⁵ The Commission therefore determined that Bellcore's successor "should be a non-governmental entity that is not aligned with any particular telecommunications industry segment."⁶

The NANC's proposed neutrality criteria confirm the Commission's view that the NANPA must not represent, or be unduly influenced by, any segment of the industry that will use NANP numbering resources. Specifically, the NANC proposes that the NANPA may not be an affiliate of any telecommunications service provider as defined in the Telecommunications Act of 1996 (the "Act") -- *i.e.*, an entity that provides telecommunications "for a fee directly to the public . . ."⁷ and therefore will require allocations of NANPA-distributed telephone numbers. Similarly, the NANC proposes that the NANPA should not "be subject to undue influence by parties with a vested

³ *Administration of the North American Numbering Plan*, 11 FCC Rcd 2588 (1995) ("*NANP Administration Order*").

⁴ "The major difficulty with the current NANP Administrator is its association with the BOCs and the potential conflict of interest that creates." *Id.* at 2604.

⁵ Various commenters in the NANP Administration proceeding had complained that "bias in number assignment practices may prevent them from being treated fairly in the assignment of numbers," and that "Bellcore's affiliation with the regional Bell operating companies prevented it from performing its [number allocation] functions in an impartial manner . . ." *Id.* at 2598.

⁶ *Id.* at 2613.

⁷ 47 U.S.C. §153(46).

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interest in the outcome of numbering administration and activities.”⁸ As these proposed standards show, the NANC, like the Commission, regards competitive neutrality as a means of ensuring that the NANPA will not favor itself, or any user of numbering resources with which it may be affiliated, in the allocation of the numbering resources for which it will be responsible.⁹

The business relationships described in Mitretek’s ex parte presentation are fully in accordance with these principles. As the following discussion demonstrates, all of those relationships are with entities that will not use numbering resources and are not classifiable as telecommunications service providers under the Act.

2. Loral SKYNET, Globalstar And Astrolink Do Not Provide Telecommunications Services.¹⁰

Globalstar, Astrolink, and Loral SKYNET plainly meet the requirement of competitive neutrality. The Commission already has found that Globalstar and Astrolink will not provide telecommunications services within the meaning of the Act. Loral SKYNET provides only space segment capacity primarily for use with customer-provided equipment by a small group of broadcasters, cable operators and other video providers, who in turn offer video services directly to the public, and does not offer any telecommunications service directly to the public. Accordingly, Globalstar, Astrolink and Loral SKYNET are not telecommunications service providers and present no risk that Lockheed will not carry out the NANPA’s functions impartially.

A. Loral SKYNET

Lockheed’s investment in Loral SKYNET¹¹ does not violate the NANPA competitive neutrality requirement. Loral SKYNET does not and will not use NANP

⁸ NANC Proposed §52.12(a)(3).

⁹ The NANC also proposes that the NANPA may not issue a majority of its debt to, nor derive a majority of its revenues from, any telecommunications service provider. NANC Proposed § 52.12(a)(2). In this regard, Lockheed notes that it is a highly diversified corporation with \$33 billion in annual sales, derived primarily from defense-related products and services.

¹⁰ NANC Proposed §52.12(a)(1).

¹¹ Loral SKYNET is an indirect, wholly owned subsidiary of Loral Space & Communications Ltd. (“Loral Space”) through three intervening subsidiaries. Lockheed Martin received a preferred stock position as a result of the January 1996 acquisition of Loral’s defense electronics operations. At the time Lockheed Martin acquired an interest in Loral Space, Lockheed Martin’s interest represented 20 percent of Loral Space’s shares on a fully diluted

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resources (*i.e.*, telephone numbers) and does not meet the Act's definition of "telecommunications services." Accordingly, Loral SKYNET cannot be classified as a "telecommunications service provider" under the Act or the NANC proposed rules.

In order to be classified as a provider of telecommunications services, Loral SKYNET must offer services that satisfy two requirements: first, those services must be provided to the public, or to "such classes of users" as may be equivalent to public availability; and second, those services must be provided to the public *directly*, rather than through intermediate customers.

The first requirement is not met where, as here, a service provider offers service only to a restricted class of non-end user customers. The bulk of Loral SKYNET space segment is leased for video distribution services to a small group of broadcasters, cable operators and other video providers. Loral SKYNET also provides space segment to AT&T and GCI who use it for system redundancy and/or to fulfill certain government contracts. In addition, Loral SKYNET leases space segment to GE Tridom, which, in turn, provides VSAT services to corporate customers. Loral SKYNET has no ground facilities or switches through which it can connect with the public switched telephone network and offer service directly to the public.¹² Loral SKYNET customers also must provide their own equipment.

Loral SKYNET's highly restricted scope of service is susceptible to the same analysis as was applied in the 1996 cable landing licensing decision in the *AT&T Submarine Systems, Inc. Application* proceeding.¹³ In that proceeding, the International Bureau reasoned that in deciding "whether a service is effectively available directly to the public," and therefore is a telecommunications service under the Act, the Commission

basis. As of September 1, 1997, Lockheed Martin's interest represents approximately 16 percent of Loral Space's shares on a fully diluted basis, a reduction of 25 percent since January 1996.

¹² Lockheed notes that the licenses and authorizations for the next generation of Telstar satellites are for non-common carrier services. *Applications of AT&T Corp. for Authority to Construct, Launch, and Operate Space Stations in the Domestic Fixed-Satellite Service*, 11 FCC Rcd 15038, 15040 (1996). Lockheed also understands that Loral SKYNET's present offering of common carrier services on Telstar 5 was approved by the FCC in response to an AT&T petition, following the loss of Telstar 401 early in 1997, to allow continuation of service on Telstar 5 to existing Telstar 401 customers. No Telstar 5 services, however, are provided to the public directly.

¹³ *AT&T Submarine Systems, Inc. Application for a License to Land and Operate a Digital Submarine Cable System Between St. Thomas and St. Croix in the U.S. Virgin Islands*, 11 FCC Rcd 14885 (1996) ("*AT&T SSF*").

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must determine “the type, nature, and scope of users for whom the service is intended and whether it is available to a ‘significant restricted class of users.’”¹⁴ In the case before it, the International Bureau found that AT&T SSI’s service would not be effectively available directly to the public because AT&T SSI proposed to make available “bulk capacity in its system to a significantly restricted class of users, including common carrier cable consortia, common carriers, and large businesses.”¹⁵ Accordingly, AT&T SSI was not classified as a telecommunications service provider. The analysis in *AT&T SSI* is fully applicable to Loral SKYNET. Loral SKYNET, like AT&T SSI, offers its service to a “restricted class of users” consisting primarily of other carriers, rather than to the public at large.

The second requirement of a telecommunications service under the Act is that it be available “*directly* to the public, or to such classes of users as to be effectively available *directly* to the public, regardless of the facilities used.”¹⁶ This language, on its face, sharply distinguishes services that are offered to a broad base of public end users, such as dialtone and long distance services, from services, like Loral SKYNET’s, that are offered only to carriers and other intermediaries that stand between the provider of the service and the ultimate user. As the International Bureau pointed out in the *AT&T SSI* decision, an entity is not “providing a service that is effectively available to the public,” within the meaning of the Act, simply because its “customers use the capacity obtained from [that entity] to provide a service to the public.”¹⁷ In order to offer a

¹⁴ *Id.* at 14892.

¹⁵ *Id.*

¹⁶ 47 U.S.C. §153(46) (emphasis supplied).

¹⁷ *AT&T SSI*, 11 FCC Rcd at 14892. Lockheed strongly urges that in interpreting the competitive neutrality requirements applicable to the NANPA, the Commission should follow the approach taken in the *AT&T SSI* decision, rather than the apparent conclusion, in the Commission’s *Universal Service Order Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC No. 97-157 (May 8, 1997) (“*Universal Service Order*”), that entities that do not serve end users may nonetheless be classified as telecommunications service providers. *Universal Service Order* at ¶ 785. That conclusion, which the Commission based on a definition of “telecommunications service provider” that was proposed by the House of Representatives before the House receded to the Senate’s proposed definition, and that was not included in the Act, should not be extended improperly to the NANPA competitive neutrality rules.

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telecommunications service under the Act, an entity must itself offer service to the public. Loral SKYNET does not offer any service of this kind.¹⁸

B. Globalstar

Globalstar intends to provide mobile voice, data, facsimile, position location and other mobile satellite services through distributors for both domestic and international subscribers.¹⁹ The Commission has found, however, that Globalstar will not provide telecommunications services and thus will not be classified as a telecommunications carrier. Specifically, the Commission stated

Globalstar space segment will be offered on a contract basis to vendors who in turn will provide MSS services to subscribers and/or resell capacity to other service vendors. [The licensee] does not intend to hold itself out to provide MSS service indifferently to the public. We therefore will allow [it] to operate as a non-common carrier.²⁰

Accordingly, Globalstar's services do not qualify as telecommunications services under the Act and Globalstar should not be deemed a telecommunications service provider for purposes of the neutrality requirements.²¹

¹⁸ The NANC proposed rules will be deprived of their rational basis if entities that do not provide service directly to the public can be classified as telecommunications service providers. Only entities that serve the public directly, by offering service to end users, are users of numbers, and only a user of numbers will confront a conflict of interest if selected to serve as the NANPA.

¹⁹ *Application of Loral/Qualcomm Partnership, L.P. For Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands*, 10 FCC Rcd 2333 (1995) *aff'd*, 11 FCC Rcd 18502 (1996).

²⁰ *Id.* at 2336.

²¹ Lockheed Martin has only an indirect, minority interest in Globalstar. Specifically, Lockheed Martin has a 16 percent interest in Loral, which has, in turn, a 38 percent interest in Globalstar. Both Loral Space and Globalstar are publicly traded corporations.

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C. Astrolink

Astrolink intends to provide a variety of advanced broadband communications services to businesses and consumers on a worldwide basis.²² In authorizing the construction, launch and operation of Astrolink's nine GSO FSS satellites, however, the Commission concluded that Astrolink may operate on a non-common carrier basis as well.²³ Astrolink does not, therefore, provide telecommunications services within the meaning of the Act and should not be considered a telecommunications service provider for purposes of the neutrality requirements.

3. Lockheed Martin Intersputnik ("LMI") Does Not Plan To Serve The United States And Will Not Use NANP Resources

On June 2, 1997, Lockheed Martin Corporation announced the creation of LMI, a joint venture between Lockheed Martin and Intersputnik.²⁴ The business plan for the joint venture is in its early stages of development. As a general matter, LMI plans to develop a commercial satellite services business using resources contributed by both Lockheed Martin and Intersputnik. Lockheed Martin will contribute spacecraft and associated launch services. Intersputnik will contribute its existing business infrastructure (e.g., marketing network, distribution system, customer base), the use of certain orbital locations and international coordination services.

The initial business effort of the joint venture may involve the use of one Lockheed Martin satellite to be launched in late 1998 using a Belarus-filed orbital slot at 75E. The orbital slot in which the first LMI satellite intends to operate does not provide coverage of the United States. Proposed services to be provided include broadcast, fixed telecommunications and VSAT services to customers in Eastern Europe, South Asia, Africa and the Commonwealth of Independent States. The potential competitive harms sought to be safeguarded against by the imposition of the neutrality requirements are not implicated by LMI's proposed service offering. Any potential service of LMI will not be provided directly to end users, will not use NANP resources and can in no way affect Lockheed's neutrality.

²² *Lockheed Martin Corporation Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service, File Nos. 182 Through 186-SAT-P/LA-95, DA No. 97-973 (May 9, 1997).*

²³ *Id.* at ¶ 30.

²⁴ Established 25 years ago, Intersputnik is an international intergovernmental satellite organization composed of 22 member administrations.

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Finally, Lockheed urges the Commission to interpret the requirement of competitive neutrality with due regard to substance in preference to form. Any requirements the Commission chooses to apply -- whether the NANC's proposed rules or some other formulation -- must be well calculated to ensure impartiality in the specific tasks the NANPA is required to perform. Those tasks involve the administration of the North American Numbering Plan and the allocation of numbers needed to provide service to end users under that Plan. Neutrality in these tasks does not require that the NANPA have no involvement in the telecommunications industry: it requires only that the NANPA and its affiliates not be in a position to benefit from preferential treatment in the allocation of numbering resources. Lockheed's relationships with LMI, Globalstar, Astrolink and Loral SKYNET create no such conflict of interest and should not disqualify Lockheed from serving as the North American Numbering Plan Administrator.

Sincerely,



Cheryl A. Tritt
Counsel for Lockheed Martin IMS

cc: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Susan Ness
Commissioner Rachelle B. Chong
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